

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

In Re

MANUEL RAUL REYO PENA GARCIA MONTERO) 1:12-cv-00011-JAW

RECOMMENDED DECISION
RE: MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

The petitioner in this action has filed a motion to proceed *in forma pauperis* on appeal.

When the matter was originally filed I reviewed the complaint and the motion to proceed *in forma pauperis* in this Court. I then issued the following recommendation:

The plaintiff, a prisoner at a federal penitentiary in Florida who indicates he is known as Reyes Pena, has filed a pleading with this Court asking for an “immediate order of constitutional criminal injunction upon the elected 44th President of the United States,” an “immediate order of constitutional criminal injunction upon all elected federal official[s]” in the Congress, a redrawing of “federal district area by the several state legislatures of 10 equal congressional areas,” and an “immediate order of constitutional dismissal upon all laws.” Reyes Pena’s pleading is accompanied by four inexplicable exhibits and an application to proceed *in forma pauperis*. He purports to name as defendants the “Chief Commander of the United States,” the vice-president, and “All Gov of States.” It is impossible to attempt to characterize this document in any meaningful fashion.

I have screened Reyes Pena’s submission pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) and conclude that it is frivolous on its face. Therefore, I decline to grant Reyes Pena *in forma pauperis* status. I recommend that the Court deny him *in forma pauperis* status and dismiss the complaint pursuant to 28 U.S.C. § 1915(e)(2).

(Doc. No. 3.) That recommendation was affirmed by the District Court Judge on January 25, 2012, and judgment entered on the same date. (Doc. Nos. 5 & 6.) On April 30, 2012, petitioner filed what I believe to be an untimely¹ notice of appeal (Doc. No. 30) and a request for leave to proceed *in forma pauperis* on appeal. (Doc. No. 9.)

¹ See Rule 4(a)(1) and Rule 4(c)(1) of the Federal Rules of Appellate Procedure.

In spite of this litigant's apparent indigent status, I recommend this Court deny this motion under the provisions of Rule 24 of the Federal Rules of Appellate Procedure, which allows a district court to deny such a motion if it finds that the motion is not taken in good faith and states its reasons for the denial in writing. Fed. R. App. P. 24(a)(2), (4). The statutory basis for this rule is found at 28 U.S.C. § 1915(a)(3), which circumscribes a litigant's right to proceed *in forma pauperis* on appeal. The written reasons for denial are as stated in the initial recommendation, because this cannot possibly be a "good faith appeal."

Based upon the foregoing, I recommend this Court deny Montero's request to proceed *in forma pauperis* on appeal because it is not a "good faith appeal." I further recommend that the Court certify that the reasons for its denial are the reasons set forth in the prior recommended decision and that the entire matter be transmitted to the Court of Appeals for any further proceedings.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

May 2, 2012